

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 21, 2006

Division: Engineering

Bulk Item: Yes X No

Department: Wastewater

Staff Contact Person: David S. Koppel, PE
County Engineer

AGENDA ITEM WORDING: Approval of Interlocal Agreement (ILA) for the Big Coppitt Regional Wastewater System.

ITEM BACKGROUND: The design of the Big Coppitt collection system is nearly complete and design of the treatment plant has been initiated. It is necessary to execute the project specific ILA in anticipation of construction and associated reimbursement requests.

PREVIOUS RELEVANT BOCC ACTION: The County by Interlocal Agreement dated September 6, 2005, and by Master Lease dated as of September 6, 2005, has committed to providing funding for Lower Keys wastewater projects. On May 16, 2006, the County passed Resolution No. 199-2006 to appropriate the first Five Million Dollars (\$5,000,000.00) for the Project.

CONTRACT/AGREEMENT CHANGES: This is a new ILA.

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: \$23.5+M

BUDGETED: Yes X No

COST TO COUNTY: \$23.5M

SOURCE OF FUNDS: Fund 304, DCA and DEP Grant Funding, MSTU, non ad-valorem assessments, and DEP State Revolving Loan Funds.

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:


David S. Koppel, PE, County Engineer

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

**INTERLOCAL AGREEMENT
BETWEEN
MONROE COUNTY
AND
FLORIDA KEYS AQUEDUCT AUTHORITY
FOR THE
BIG COPPITT REGIONAL WASTEWATER SYSTEM**

THIS INTERLOCAL AGREEMENT (Agreement) is entered into this ____ day of _____, 2006, pursuant to Florida Statute Sec. 163.01, by and between Monroe County (County), a political subdivision of the State of Florida, and the Florida Keys Aqueduct Authority (FKAA), an independent special district.

WHEREAS, the County is authorized by Florida Statute Sec. 125.01(1) to provide, assist in providing, and fund centralized wastewater treatment systems; and

WHEREAS, Section 6, Chapter 99-395, Laws of Florida, and the County's Comprehensive Plan require that certain wastewater treatment levels be achieved by the year 2010, which levels can best be achieved by central wastewater treatment systems; and

WHEREAS, the FKAA is authorized by Chap. 76-441, Laws of Florida, as amended, and Chapter 98-519, Laws of Florida, to design, construct, and operate, wastewater treatment systems; and

WHEREAS, the FKAA and the County have entered into previous interlocal agreements establishing and confirming their ongoing partnership in providing wastewater facilities in the Florida Keys; and

WHEREAS, the County adopted Ordinance No. 38-2002, authorizing the levy of ad valorem taxes in the Big Coppitt Municipal Service Taxing Unit, in order to provide an initial source of funding for the Big Coppitt Regional Wastewater Project (Project); and

WHEREAS, FKAA has initiated planning, design and other services for the Project for which it may be paid with taxing unit funds; and

WHEREAS, the County by Interlocal Agreement dated September 6, 2005, and by Master Lease dated as of September 6, 2005, has committed to seek funding through federal and state grants and loans and the issuance of revenue bonds backed by the pledge of infrastructure sales tax; and will be providing additional funds to the FKAA for the administration, planning and construction of future wastewater projects in unincorporated Monroe County; and

WHEREAS, the County may have other funding mechanisms, including but not limited to infrastructure sales tax, grant and loan funding and ad valorem taxes, available to it for the provision of sewers and wastewater treatment; and

WHEREAS, on May 16, 2006, the County passed Resolution No. 199-2006 to appropriate the first Five Million Dollars (\$5,000,000.00) for the Project; and

WHEREAS, County and FKAA desire to put in place procedures for the allocation, expenditure, and reimbursement of funds for the Project;

NOW, THEREFORE, in consideration of the mutual consideration and promises set forth below, the parties agree as follows:

1. COUNTY FUNDING. The County by resolution of its Board of County Commissioners, shall appropriate from any lawfully available source, those funds which have been duly approved for the estimated costs of administration, planning and construction of the Project, which shall not exceed Fifteen Million Dollars (\$15,000,000). These funds are in addition to the Five Million Dollars (\$5,000,000) previously authorized under Resolution No. 199-2006. Municipal Service Taxing Unit ad valorem tax proceeds collected by County shall be provided to FKAA as part of the funding under this Agreement and shall be disbursed as described in paragraph 3 below. Before such disbursement, County may deduct its costs of administration and professional costs from the MSTU funds collected. As the Project progresses, and estimates are altered to reflect a combination of actual costs incurred and changes in pricing due to contracts resulting from bid processes, or other changed conditions, the FKAA shall provide such information to the County. This Agreement shall be modified as necessary to reflect such changes in the estimates in order to provide for adequate funding to be available for the timely and efficient construction of the project. The amount of the funding may be changed by written amendment to this Agreement approved by the parties.

2. PROJECT. The Project shall consist of a collection system, transmission main and method of treatment to Advanced Wastewater Treatment standards sufficient to serve the needs of the residents and businesses in the Big Coppitt Municipal Service Taxing Unit. Both FKAA and County shall perform their respective obligations and responsibilities under the Interlocal Agreement dated September 6, 2006. Attached are a project area map and project description (Exhibit A).

2. EXPENDITURE OF FUNDS. The FKAA shall begin to utilize the Five Million Dollars (\$5,000,000.00) originally awarded and described in Paragraph 1 for the administration, planning, design and complete construction of the Project. Thereafter, during the course of the Project, the FKAA may request reimbursement for payments made by FKAA upon submission of documentation of previous expenditures from the Five Million Dollars (\$5,000,000.00) until the total amount allocated by the County is exhausted. The FKAA shall submit this documentation to the County Senior Administrator (CSA) for Sewer Projects describing the services performed and stating for which wastewater district/Project the funds were expended. The submission must be in a form satisfactory to the CSA and Clerk of the Circuit Court (Clerk). If the CSA approves the submission, she shall forward the same to the Clerk. If the CSA or the Clerk determine that the submission is unacceptable, either of them shall return it to the FKAA in writing with a written description of the deficiency(ies).

3. FISCAL CONTROLS AND QUARTERLY REPORTS. The FKAA shall establish fiscal controls and fund accounting procedures that comply with generally accepted government accounting principles, satisfactory to the Clerk, in order to assure that the funds provided to the FKAA are spent for the purposes set forth in this Agreement. All FKAA financial records pertaining to this Agreement must be made available, upon request, to the Clerk, an auditor employed by the County or the State of Florida. The records must be retained by the FKAA for five years following the receipt by the FKAA of its last payment pursuant to this Agreement. Any funds transferred by the County to the FKAA under this Agreement that are determined by the Clerk, or an auditor employed by the County or employed by the State to have been spent on a purpose not contemplated by this Agreement must be paid back to the County with interest calculated pursuant to Florida Statute Sec. 55.03(1), from the date the auditor determines the funds were expended for a purpose not authorized by this Agreement. The FKAA agrees to

provide the Clerk with quarterly status reports concerning the expenditure of these funds in sufficient detail to demonstrate compliance with the provisions of this Agreement.

4. RECORDS – ACCESS AND AUDITS. FKAA shall maintain adequate and complete records for a period of five years after termination of this Agreement. The State, the County, their officers, employees, agents and contractors shall have access to FKAA's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the aforementioned government representatives shall occur at any reasonable time.

5. RELATIONSHIP OF PARTIES. FKAA is, and shall be an independent contractor and not an agent or servant of the County. FKAA shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for the purpose of this Agreement. FKAA shall have no authority whatsoever to act on behalf of or as agent of the County in any promise, Agreement or representation other than specifically provided for in this Agreement. The County shall at no time be legally responsible for any negligence on the part of FKAA, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

6. TAXES. FKAA must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to FKAA's operations related to this Agreement.

7. INSURANCE. The parties to this Agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this Agreement.

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

FKAA agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then FKAA must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the County whenever acquired or amended.

8. HOLD HARMLESS. To the extent allowed by law, FKAA is liable for and must fully defend, release, discharge, indemnify and hold harmless the County, the members of the County Commission, County officers and employees, County agents and contractors, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to FKAA's operations in connection with this Agreement except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the County. FKAA's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. FKAA does not waive any of its

sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

9. NON-DISCRIMINATION. FKAA and County agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. FKAA and County agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

10. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and FKAA agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. Neither this Agreement nor any of its terms is subject to arbitration. The County and FKAA agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

11. SEVERABILITY. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and FKAA agree to reform the Agreement to replace any

36. ETHICS CLAUSE. FKAA warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the County may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

37. CONSTRUCTION. This Agreement has been carefully reviewed by FKAA and County. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

38. NOTICES. Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

FKAA
Executive Director
1100 Kennedy Drive
Key West, FL 33040

39. FULL UNDERSTANDING. This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

40. ANNUAL APPROPRIATION: Funding by County is subject to an annual appropriation by the Board of County Commissioners.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

(SEAL)
Danny L. Kolhage, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairperson


FLORIDA KEYS AQUEDUCT AUTHORITY

ATTEST:

By: _____
Clerk

By: _____
Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY

BIG COPPITT PROJECT AREA BOUNDARY

PHASE 4
BIG COPPITT
SERVICE AREA

PHASE 5
SHARK KEY
SERVICE AREA

NEW ROCKLAND KEY
WWTP ALTERNATIVE

Big Coppitt Project Description

The Big Coppitt Wastewater District has been broken into 5 Service Areas: Rockland Gulf, Rockland Ocean, Big Coppitt, Shark Key, and Geiger Key. A collection system for each service area will tie into a transmission main along US1 that conveys the wastewater to a plant to be located within the Rockland Industrial Park at MM 8.5. Approximately 80,000 feet of collection system piping, 13,000 feet of transmission main, and 25 pump stations will be installed for the project. The design capacity for treatment is based on approximately 1700 EDUs.

MPS

PHASE 3
US 1 TRANSMISSION
MAIN

PHASE 1
ROCKLAND GULF
SERVICE AREA

PHASE 2
ROCKLAND OCEAN
SERVICE AREA

PHASE 6
GEIGER KEY
SERVICE AREA